

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

|                              |   |                                |
|------------------------------|---|--------------------------------|
| GUERRY E. GREEN,             | ) |                                |
|                              | ) |                                |
| Plaintiff,                   | ) | Civil Action No. 3:02-3440-MBS |
|                              | ) |                                |
| v.                           | ) |                                |
|                              | ) |                                |
| SNAVELY FOREST PRODUCTS CO., | ) | ORDER                          |
|                              | ) |                                |
| Defendant.                   | ) |                                |

This matter is before the Court on Defendant's Motion pursuant to Fed. R. Civ. P. 41(a)(2) seeking an Order dismissing Defendant's counterclaim under the Declaratory Judgment Act (28 U.S.C. §§ 2201 and 2202) without prejudice. Plaintiff consents to the motion.

In view of the Court's Orders (Docket Entries 90 and 112) granting summary judgment of noninfringement in favor of Defendant, the counterclaim can be dismissed in the Court's discretion. *See Liquid Dynamics Corp. v. Vaughan*, 355 F.3d 1361, 1371 (Fed. Cir. 2004)("A district court judge faced with an invalidity counterclaim challenging a patent that it concludes was not infringed may either hear the claim or dismiss it without prejudice, subject to review only for abuse of discretion."). The court will exercise its discretion in favor of dismissal of the counterclaim, without prejudice.

For the foregoing reasons, it is hereby ORDERED that Defendant's counterclaim under the Declaratory Judgment Act (28 U.S.C. §§ 2201 and 2202) is dismissed without prejudice.

**IT IS SO ORDERED.**

/s/ Margaret B. Seymour  
\_\_\_\_\_  
United States District Judge

Columbia, South Carolina  
August 8, 2006